80-5355

In THE UNITED STATES SUPREME COURT

Washington, D.C. 20543

A.D. 1980

State of Wisconsin Supreme Court
Case No. 80-691-W, Madison, Wisconsin,
July 9, 1980 A.D. on Appeal.

STATE EX REL;
LAWRENCE CALVIN WHITTEMORE,

Petitioner-Appellant,

vs.

CIRCUIT COURT FOR KENOSHA COUNTY,
HON. BURTON A. SCOTT, presiding,

Respondent-Appellee.

JURISDICTIONAL STATEMENT

Lawrence Calvin Whittemore
Pro Se
Box C Waupun, Wisconsin 53963.

August 28th, 1980 A.D.

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STATEMENT OF QUESTIONS

1. Can a state supreme court circumvent the law of the land with it's own cited case-law authority and legally detain a state prisoner in violation of a Federal Statute? (Re, 18 U.S.C. § 1581).

   The State of Wisconsin Supreme Court ruled July 9, 1980 A.D. that pursuant to Muller v. State, 94 Wis. 2d 450, 289 N.W. 2d 570 (1980), this Court's ruling in Sandstrom v. Montana, 442 U.S. 510 (1979) was not applicable although the question of the jury instructions is identical.

2. Can a state supreme court reverse the United States Supreme Court in violation of Article VI paragraph three of the United States Constitution?

   The State of Wisconsin Supreme Court in it's July 9, 1980 A.D. denial of a petition for a writ of habeas corpus in the case of State ex rel. Lawrence Calvin Whittemore v. Circuit Court for Kenosha County, the Hon. Burton A. Scott, presiding, Case No. 80-691-W, reversed this Court's ruling in Sandstrom v. Montana, 442 U.S. 510 (1979) by citing it's own case-law ruling in the state supreme court case of Muller v. State, 94 Wis. 2d 450, 289 N.W. 2d 570 (1980) which ruling or denial was subsequent to this Court's ruling in Sandstrom upon the same issue.

REFERENCE TO OFFICIAL OPINION BELOW

The State of Wisconsin Supreme Court denied a petition for a writ of habeas corpus filed by this petitioner-appellant in the case State ex rel. Lawrence Calvin Whittemore v. Circuit Court for Kenosha County, the Hon. Burton A. Scott, presiding, Case No. 80-691-W on the date of July 9, 1980 A.D.

STATEMENT OF CLAIMED GROUNDS OF JURISDICTION OF THE UNITED STATES SUPREME COURT

The nature of the case on appeal is the denial of a petition for a writ of habeas corpus rendered by the State of Wisconsin Supreme Court on July 9, 1980 A.D.

No petition for rehearing was filed and no cross-appeal has been applied for to date.

Petitioner-Appellant believes that Title 28 U.S.C. §§ 1257 (1), 1581 and 1915 confers jurisdiction of the appeal upon this Court.

The below listed cases sustain the jurisdiction of this Court;

Cohen v. Beneficial Indus. Loan Corp.,(1949) 337 US 541, 546-547, 69 SCt 1221, 93 Led 1528.

Com'r v. Netcher (CCA 7th, 1944) 143 F2d 484, 486.

Davis v. O'Hara, 266 US 314, 315, 45 SCt 104, 105, 69 Led 303.

Ex parte Hudgings (1919) 249 US 378, 39 SCt 337, 63 Led 656, 11 ALR 333.

Matter of Heff (1905) 197 US 488, 25 SCt 506, 49 Led 848.

Reece v. Georgia (1955) 350 US 85, 87, 76 SCt 167, 100 Led 77.

Southern Railway Co. v. Clift (1922) 260 US 316, 43 SCt 126, 67 Led 283.

Urie v. Thompson, 337 US 163, 172-173, 69 SCt 1018, 93 Led 1282, 11 ALR 2d 252.

Zeckendorf v. Steinfeld (1912) 225 US 445, 32 SCt 728, 56 Led 1156.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

United States Constitution Article VI;

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

United States Constitutional Amendment VI;

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Constitutional Amendment XIII;

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

United States Constitutional Amendment XIV;

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Title 18 United States Code § 1581;

§ 1581. Peonage; obstructing enforcement

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

A STATEMENT OF THE CASE ON APPEAL

Petitioner-Appellant was sentenced to life-imprisonment with a 15 year consecutive sentence in the year of 1977 A.D. on the date of August 4th.

Trial was by jury and the Honorable Burton A Scott, Branch XX Kenosha County Circuit Court in the city of Kenosha, Wisconsin, imposed the sentence.

Petitioner-Appellant's transcript of the proceedings show at pages 433 to 441 that the Wisconsin Jury Instructions #1100 were given to the jury prior to deliberation.

Wisconsin Jury Instructions #1100 include that, "law presumes a person responsible for the natural consequences of his acts," thereby by-passing the state's burden of proof as per intent per the crime charged and prosecuted.

A motion for original jurisdiction for a petition for a writ of habeas corpus was filed on April 10th, 1980 A.D. at the State of Wisconsin Supreme Court, Madison, Wisconsin 53702.

The State of Wisconsin Supreme Court denied petitioner-appellant the petition for a writ of habeas corpus to issue on July 9, 1980 A.D.

STATEMENT OF THE REASON THE QUESTIONS
PRESENTED REQUIRE CONSIDERATION

Petitioner-Appellant claims that the State of Wisconsin Supreme Court in it's ruling denying on July 9, 1980 A.D., the petition for a writ of habeas corpus to issue, reversed the United State Supreme Court's ruling in Sandstrom v. Montana, 442 U.S. 510 (1979) and said denial is contrary to the United States District Court, Eastern District of Wisconsin, Milwaukee, Wisconsin 53202 in the case of State v. Dreske, Wis. App., 276 N.W. 2d 324, which dealt with the same question of Wisconsin Jury Instructions #1100.

Petitioner-Appellant further claims that if this Court does not consider the questions pertinent enough for the filing of briefs or argument, that the Rules of the United States Supreme Court under Rule 52 direct a mandate to the State of Wisconsin Supreme Court pursuant to the United States Constitution at Article VI paragraphs two and three that all judicial officials within the States are to abide by the "law of the land," notwithstanding.

Petitioner-Appellant has submitted a motion to file in forma pauperis under the United States Supreme Court Rules, Rule 46, and believes that the indigent as well as the affluent should receive due process and equal protection of the laws.

Prepared By, Lawrence Calvin Whittemore

Lawrence Calvin Whittemore
Box C
Waupun, Wisconsin 53963.

August 28th, 1980 A.D.

Office of the Clerk

SUPREME COURT

STATE OF WISCONSIN

Madison, July 9, 1980

To ✓Lawrence Calvin Whittemore
Box C
Waupun, WI 53963

Edward S. Marion
Assistant Attorney General
123 West Washington Avenue
Madison, WI 53702

The Court today announced an order in your case as follows:

No. 80-691-W - State ex rel. Lawrence Calvin Whittemore v. Circuit Court for Kenosha County, the Hon. Burton A. Scott, presiding.

The court having considered the petition for a writ of habeas corpus and the court concluding that the issue raised has been resolved contrary to the petitioner's position in Muller v. State, 94 Wis. 2d 450, 289 N. W. 2d 570 (1980),

IT IS ORDERED the petition for a writ of habeas corpus is denied.

APPENDICE (A)

MARILYN L. GRAVES

Clerk of Supreme Court.

SC-105

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In UNITED STATES SUPREME COURT

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A.D. 1980

LAWRENCE CALVIN WHITTEMORE
Box C
Waupun, Wisconsin 53963,

Petitioner-Appellant,

vs.

STATE OF WISCONSIN
KENOSHA COUNTY CIRCUIT COURT
Branch II, Honorable Burton A.
Scott,

Respondent-Appellee.

Case No. 80-691-W
State of Wisconsin
Supreme Court.

NOTICE OF APPEAL.

To: Edward S. Marion
Assistant Attorney General
123 West Washington Avenue
Madison, Wisconsin 53702

PLEASE TAKE NOTICE, that the petitioner-appellant, Lawrence Calvin Whittemore, shall appeal for and upon constitutional reasons from the decision rendered by the Wisconsin Supreme Court on July 9th, 1980 A.D. to the United States Supreme Court pursuant to Title 28 U.S.C. § 1257(1).

Petitioner-Appellant By,

Lawrence Calvin Whittemore
Box C
Waupun, Wisconsin 53963.

Dated: July 21st, 1980 A.D.
at Box C Waupun, WI. 53963.

APPENDICE (C)